

AMENDED IN SENATE AUGUST 24, 2000

AMENDED IN ASSEMBLY APRIL 13, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 522**

**Introduced by Assembly Member Floyd Wayne**  
(Coauthor: Senator O'Connell)

February 18, 1999

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~~An act to add Section 7065 to the Revenue and Taxation Code, relating to taxation.— An act to amend Sections 37002, 37005, 37006, 37011, 37012, 37013, 37015, 37016, 37020, and 37021 of, and to add Sections 37023, 37024, and 37025 to, the Public Resources Code, relating to conservation.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 522, as amended, ~~Floyd Wayne. Sales and use taxes: permits~~ *Natural Heritage Preservation Tax Credit Act of 2000.*

*Chapter 113 of the Statutes of 2000 enacted the Natural Heritage Preservation Tax Credit Act of 2000 which authorizes the donation of property, meeting specified criteria, to the state, any local government, or any designated nonprofit organization in return for a tax credit on a portion of the value of the property.*

*This bill would make various technical changes to that act. The bill would also incorporate provisions into that act relating to public access to the donated property, and would authorize the city, county, or city and county in which the property is located to request the Director of Finance to*

*disapprove the acceptance of the property and would require the director to provide a written explanation of his or her decision.*

~~The Sales and Use Tax Law provides that every person desiring to engage in or conduct business as a seller within this state shall file with the State Board of Equalization an application for a permit for each place of business, as provided.~~

~~This bill would permit the board to promulgate regulations authorizing any city subject to the Bradley-Burns Uniform Local Sales and Use Tax Law, that also collects a business license tax, to take any action as the board deems appropriate to assure that every person who engages in or conducts business as a seller within this state complies with the above filing requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1. Section 7065 is added to the Revenue~~
- 2 *SECTION 1. Section 37002 of the Public Resources*
- 3 *Code, as added by Chapter 113 of the Statutes of 2000, is*
- 4 *amended to read:*
- 5 37002. As used in this division, the following terms
- 6 have the following meanings:
- 7 (a) “Approval” or “approval for acceptance” means
- 8 *the board’s approval of the granting of a tax credit for a*
- 9 *donation of property pursuant to the program.*
- 10 (b) “Board” means the Wildlife Conservation Board
- 11 created pursuant to Article 2 (commencing with Section
- 12 1320) of Chapter 4 of Division 20 of the Fish and Game
- 13 Code.
- 14 ~~(b)~~
- 15 (c) “Conservation easement” means a conservation
- 16 easement, as defined by Section 815.1 of the Civil Code,
- 17 that is contributed in perpetuity.
- 18 ~~(e)~~

1 (d) “Department” means any entity created by  
2 statute within the Resources Agency *and authorized to*  
3 *hold title to land.*

4 ~~(d)~~

5 (e) “Designated nonprofit organization” means a  
6 nonprofit organization qualified under Section 501(c)(3)  
7 of Title 26 of the United States Code that has as a principal  
8 purpose the conservation of land and water resources and  
9 that is designated by a local government or a department  
10 to accept property pursuant to this division in lieu of the  
11 local government or a department. In order to be eligible  
12 to receive a donation of property pursuant to this division,  
13 a nonprofit organization shall have experience in land  
14 conservation.

15 ~~(e)~~

16 (f) “Donee” means any of the following:

17 (1) A department to which a donor has applied to  
18 donate ~~qualified~~ property.

19 (2) A local government that has filed a joint  
20 application with a donor requesting approval of a  
21 donation of property to that local government.

22 (3) A designated nonprofit organization.

23 ~~(f)~~

24 (g) “Donor” means a property owner ~~who~~ *that*  
25 donates, or submits an application to donate, property  
26 pursuant to the program.

27 ~~(g) “Final approval” or “approval for acceptance”~~  
28 ~~means the board’s approval of the granting of a tax credit~~  
29 ~~for a donation of qualified property pursuant to the~~  
30 ~~program.~~

31 (h) “Local government” means any city, county, city  
32 and county, ~~special district~~, or any district, as defined in  
33 Section 5902 or in Division 26 (commencing with Section  
34 35100), or any joint powers authority made up of *one or*  
35 *more of* those entities or those entities and ~~state agencies~~  
36 ~~departments.~~

37 (i) “Program” means the Natural Heritage  
38 Preservation Tax Credit Program authorized by this  
39 division.

1 (j) “Property” means any real property, and any  
2 perpetual interest therein, including land, conservation  
3 easements, and land containing water rights, as well as  
4 water rights.

5 (k) “Secretary” means the Secretary of the Resources  
6 Agency.

7 *SEC. 2. Section 37005 of the Public Resources Code,*  
8 *as added by Chapter 113 of the Statutes of 2000, is*  
9 *amended to read:*

10 37005. The Wildlife Conservation Board shall  
11 implement the program. The board may request staff  
12 services from any department that submits an application  
13 *and a proposal for a donation of property to the board.*

14 *SEC. 3. Section 37006 of the Public Resources Code,*  
15 *as added by Chapter 113 of the Statutes of 2000, is*  
16 *amended to read:*

17 37006. (a) Under the program, upon approval by the  
18 board, a donor may contribute ~~his—or—her~~ qualified  
19 property to a donee and receive a tax credit for a portion  
20 of the value of the property, as provided in Sections  
21 17053.30 and 23630 of the Revenue and Taxation Code.

22 (b) The board shall adopt guidelines or regulations to  
23 implement the program, including procedures for  
24 applications submitted pursuant to Chapter 4  
25 (commencing with Section 37010) and for the evaluation  
26 of properties proposed to be contributed pursuant to the  
27 program. Chapter 3.5 (commencing with Section 11340)  
28 of Part 1 of Division 3 of Title 2 of the Government Code  
29 does not apply to the guidelines or regulations adopted  
30 pursuant to this section.

31 *SEC. 4. Section 37011 of the Public Resources Code,*  
32 *as added by Chapter 113 of the Statutes of 2000, is*  
33 *amended to read:*

34 37011. At a minimum, each application shall contain  
35 all of the following:

36 (a) The identification of the donor and donee.

37 (b) A description of the property, including  
38 documentation of how the property meets the criteria ~~for~~  
39 ~~qualified—property~~ *and qualifies for acceptance under the*  
40 *program.*

(c) A property appraisal meeting the requirements of Section 170 of Title 26 of the United States Code, setting forth the fair market value of the property.

(d) (1) ~~A certification by the donor that the contribution satisfies the requirements for a qualified contribution, pursuant to Section 37015, and that the donor received no other valuable consideration for the donation of property eligible for the tax credit.~~

(2) ~~The donor shall also certify~~ *A certification by the donor that the contribution was not, and is not, required to satisfy a condition imposed upon the donor by any lease, permit, license, certificate, or other entitlement for use issued by one or more public agencies, including, but not limited to, the mitigation of significant effects on the environment of a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)).*

(e) A certification by the donor that the application discloses any known or suspected environmental conditions associated with the property.

*SEC. 5. Section 37012 of the Public Resources Code, as added by Chapter 113 of the Statutes of 2000, is amended to read:*

37012. (a) Each donee shall evaluate applications submitted to it and prepare a plan for the board that sets forth the donee's priorities for acquisition of ~~qualified~~ property *that qualifies* under the program. Consistent with the criteria established for the program, each donee may use its own priority lists and procedures in determining which properties or types of properties shall be given priority.

(b) Each donee or the board may request that the applicant supply further information reasonably necessary to allow the donee or the board to evaluate the proposed donation. ~~The~~

(c) ~~The~~ department may accept contributions of money from any taxpayer to pay or reimburse the costs of appraisal, escrow, title, and other transaction costs

1 associated with the contribution of any particular  
2 property or set of properties, including any  
3 environmental assessments required by the department,  
4 and the costs of preparing any necessary management  
5 plan for the property or set of properties.

6 ~~(e)~~

7 (d) Prior to acquiring an easement or other interest in  
8 land pursuant to this division, a public hearing shall be  
9 held by the donee, if the donee is a public agency, or by  
10 the board if the donee is a ~~non-profit~~ *designated nonprofit*  
11 organization, in the local community. Notice shall be  
12 given by the donee *or the board* to the county board of  
13 supervisors of the affected county, adjacent landowners,  
14 affected water districts, local municipalities, and other  
15 interested parties, as determined by the donee or the  
16 board.

17 ~~(d)~~

18 (e) When submitting a donation of qualified property  
19 to the board for final approval, the donee shall provide  
20 the board with the fair market value of the property  
21 proposed for acceptance, based on appraisals that have  
22 been reviewed and approved by the Department of  
23 General Services.

24 *SEC. 6. Section 37013 of the Public Resources Code,*  
25 *as added by Chapter 113 of the Statutes of 2000, is*  
26 *amended to read:*

27 37013. The board shall provide a list to the Joint  
28 Legislative Budget Committee and the Franchise Tax  
29 Board, in the form and manner ~~agreed upon~~ *determined*  
30 by the Franchise Tax Board, of the names, taxpayer  
31 identification numbers, including taxpayer identification  
32 numbers of each partner or shareholder, as applicable, a  
33 *legal* description of the donated property, and the total  
34 amount of the tax credit approved for each donation.

35 *SEC. 7. Section 37015 of the Public Resources Code,*  
36 *as added by Chapter 113 of the Statutes of 2000, is*  
37 *amended to read:*

38 37015. The board shall approve only contributions of  
39 properties that meet one or more of the following criteria:

1 (a) The property will help meet the goals of a habitat  
2 conservation plan, multispecies conservation plan,  
3 natural community conservation plan, or any other  
4 similar plan subsequently authorized by statute that is  
5 designed to benefit native species of plants, *including,*  
6 *but not limited to, protecting forests, old growth trees, or*  
7 *oak woodlands,* and animals and development, ~~including,~~  
8 ~~but not limited to, protecting forests, old growth trees, or~~  
9 ~~oak woodlands.~~ In proposing and approving the  
10 acceptance of contributed property pursuant to this  
11 subdivision, the recovery benefits for listed species, the  
12 habitat value of the property, the value of the property  
13 as a wildlife corridor, and similar habitat-related  
14 considerations shall be the criteria on which the  
15 acceptance is based.

16 (b) The property will provide corridors or reserves for  
17 native plants and wildlife that will help improve the  
18 recovery possibilities of listed species and increase the  
19 chances that the species will recover sufficiently to be  
20 eligible to be removed from the list, or will help avoid the  
21 listing of species pursuant to the California Endangered  
22 Species Act (Chapter 1.5 (commencing with Section  
23 2050) of Division 3 of the Fish and Game Code) or the  
24 federal Endangered Species Act (16 U.S.C. Sec. 1531 et  
25 seq.), or protect wetlands, waterfowl habitat, or river or  
26 stream corridors, or promote the biological viability of  
27 important California species.

28 (c) The property interest is a perpetual conservation  
29 easement over agricultural land, or is a permanent  
30 contribution of agricultural land, that is threatened by  
31 development and is located in an unincorporated area  
32 certified by the secretary to be zoned for agricultural use  
33 by the county. Property accepted pursuant to this  
34 subdivision shall be accepted pursuant to the California  
35 Farmland Conservancy Program Act established by  
36 Division 10.2 (commencing with Section 10200),  
37 pursuant to the agricultural conservation program of the  
38 Coastal Conservancy, or pursuant to the Bay Area  
39 Conservancy Program established pursuant to Chapter  
40 4.5 (commencing with Section 31160) of Division 21.

1 (d) (1) The property interest is a water right, or land  
2 with an associated water right, and the contribution of the  
3 property will help improve the chances of recovery of a  
4 listed species, will reduce the likelihood that any species  
5 of fish or other aquatic organism will be listed pursuant  
6 to the California Endangered Species Act (Chapter 1.5  
7 (commencing with Section 2050) of Division 3 of the Fish  
8 and Game Code)) or the federal Endangered Species Act  
9 (16 U.S.C. Sec. 1531 et seq.), will improve the protection  
10 of listed species, or will improve the viability and health  
11 of fish species of economic importance to the state. The  
12 ~~agency or local government~~ donee receiving the water  
13 right, or land with an associated water right, shall ensure  
14 that it shall retain title to the water right, and that the  
15 water shall be used to fulfill the purposes for which the  
16 water right or land associated with a water right is being  
17 accepted.

18 (2) Any contribution of a water right that includes a  
19 change in the point of diversion, place of use, or purpose  
20 of use may be made only if the proposed change will not  
21 injure any legal user of the water involved and is made in  
22 accordance with either Chapter 10 (commencing with  
23 Section 1700), or Chapter 10.5 (commencing with Section  
24 1725), of Part 2 of Division 2 of the Water Code.

25 (e) The property will be used as a park or open space  
26 or will augment public access to or enjoyment of existing  
27 regional; or local park, beach, or open-space facilities, or  
28 will preserve archaeological resources.

29 *SEC. 8. Section 37016 of the Public Resources Code,*  
30 *as added by Chapter 113 of the Statutes of 2000, is*  
31 *amended to read:*

32 37016. (a) The board shall ~~accept applications~~ grant  
33 approval of a proposed contribution of property under  
34 the program only upon a determination that:

35 (1) (A) The donation of property satisfies the  
36 requirements for a qualified contribution pursuant to  
37 Section 170 of Title 26 of the United States Code. If only  
38 a portion (either an undivided fractional interest in the  
39 entire property or one or more discrete parcels) of a  
40 proposed conveyance of property satisfies the



1 requirements of Section 170 of Title 26 of the United  
2 States Code, or if the property is sold for less than fair  
3 market value, only that portion, or the amount  
4 representing the difference between the amount paid by  
5 the donee and the fair market value, shall be eligible for  
6 the tax credit, to the extent permitted by Section 170(h)  
7 of Title 26 of the United States Code. The board may  
8 segregate eligible and ineligible interests in property  
9 *proposed to be* contributed pursuant to this division. The  
10 donor shall receive no other valuable consideration for  
11 the donation of property subject to the tax credit.

12 (B) For purposes of this division, if the property  
13 ~~accepted by the board was~~ *is proposed to be* donated to  
14 satisfy a condition imposed upon the donor by any lease,  
15 permit, license, certificate, or other entitlement for use  
16 issued by one or more public agencies, including, but not  
17 limited to, the mitigation of significant effects on the  
18 environment of a project pursuant to an approved  
19 environmental impact report or mitigated negative  
20 declaration required pursuant to the California  
21 Environmental Quality Act (Division 13 (commencing  
22 with Section 21000)), that property shall not qualify for  
23 the credit provided in Section 17053.30 or 23630 of the  
24 Revenue and Taxation Code.

25 (2) There has been no release or threatened release of  
26 a hazardous material on the property, unless all of the  
27 following occur:

28 (i) A final remedy in response to the release has been  
29 approved by the Department of Toxic Substances  
30 Control pursuant to Chapter 6.5 (commencing with  
31 Section 25100) of, Chapter 6.8 (commencing with Section  
32 25300) of, or Chapter 6.85 (commencing with Section  
33 25396) of, Division 20 of the Health and Safety Code, or  
34 the appropriate California regional water quality control  
35 board pursuant to Chapter 6.7 (commencing with  
36 Section 25280) of Division 20 of the Health and Safety  
37 Code.

38 (ii) The donor or donee have agreed to implement the  
39 final remedy approved pursuant to clause (i).

1 (iii) The donor or donee have agreed to fund and have  
2 made adequate funding available to pay for the response  
3 action, as defined by Section 25323.3 of the Health and  
4 Safety Code.

5 (b) Notwithstanding paragraph (2) of subdivision (a),  
6 a donation of property containing hazardous materials  
7 may be accepted under the program without satisfying  
8 the requirements of paragraph (2) of subdivision (a) if  
9 ~~the department that is the donee determines, based on~~  
10 ~~written findings from the Department of Toxic~~  
11 ~~Substances Control and the California regional water~~  
12 ~~quality control board with jurisdiction over the property,~~  
13 ~~that the hazardous materials present will pose no~~  
14 ~~substantial risk to human health or the environment and~~  
15 ~~no substantial risk of liability on the donee under the~~  
16 ~~conditions under which the property will be used. The~~  
17 ~~Department of Toxic Substances Control and the~~  
18 ~~California regional water quality control board with~~  
19 ~~jurisdiction over the property shall carry out their normal~~  
20 ~~due diligence when developing the written findings that~~  
21 ~~will be the basis for the department's or regional board's,~~  
22 ~~whichever is applicable,~~ written determination  
23 regarding the presence and risk of toxic materials on the  
24 property *by the Department of Toxic Substances Control*  
25 *or the regional board, whichever is applicable.* As used in  
26 this subdivision, "hazardous materials" has the same  
27 meaning as contained in subdivision (d) of Section 25260  
28 of the Health and Safety Code.

29 *SEC. 9. Section 37020 of the Public Resources Code,*  
30 *as added by Chapter 113 of the Statutes of 2000, is*  
31 *amended to read:*

32 37020. (a) Nothing in this division authorizes or  
33 increases the authority of any state or local *public* agency  
34 to use eminent domain to acquire private property.

35 (b) Nothing in this division diminishes existing land or  
36 water rights held by easement holders in any property  
37 proposed for donation.

38 *SEC. 10. Section 37021 of the Public Resources Code,*  
39 *as added by Chapter 113 of the Statutes of 2000, is*  
40 *amended to read:*

1 37021. (a) If any property approved for acceptance  
2 pursuant to this division is later transferred by the donee,  
3 ~~either~~ the use of the property shall be restricted by deed  
4 to the conservation purposes for which the property was  
5 contributed pursuant to the program—~~or~~. *If the board*  
6 *determines that the conservation purposes for which the*  
7 *property was contributed can no longer be achieved due*  
8 *to significantly changed circumstances beyond the*  
9 *control of the donee that accepted the property,* the  
10 proceeds of the sale shall be used by the donee that  
11 accepted the property to acquire land in California of  
12 equal or greater value and comparable public resources  
13 values, *as determined by the board.* The land acquired  
14 shall meet the criteria of Section 37015. Nothing in this  
15 division prohibits the transfer of donated property to a  
16 nonprofit organization that is qualified to manage the  
17 property for the purposes intended by this division, if the  
18 terms of this section are met. Any local government or  
19 nonprofit organization seeking to sell land pursuant to  
20 this subdivision shall first obtain the approval of the board  
21 ~~that is the donee.~~

22 (b) Other than as provided by subdivision (a),  
23 property ~~accepted~~ *approved for acceptance* pursuant to  
24 this division shall ~~only~~ be used *only* for purposes  
25 consistent with Section 37015.

26 (c) (1) If any unauthorized use is made of the  
27 property after the property is donated to a local  
28 government or nonprofit organization pursuant to this  
29 program, the local government or nonprofit organization  
30 *shall seek to terminate the unauthorized use and restore*  
31 *the conservation benefits for which the property was*  
32 *contributed. If the board determines that the*  
33 *unauthorized use has not been terminated and the*  
34 *conservation benefits fully restored within a reasonable*  
35 *period of time, the fee title owner of the property shall*  
36 *pay to the state the greater of the following:*

37 (A) The fair market value of the property based on  
38 appraisals when ~~finally~~ accepted by the board.

1 (B) The fair market value of the property based on  
2 appraisals at the time of and based on the unauthorized  
3 use of the property.

4 (2) The department that is the donee *or the board* may  
5 seek injunctive relief to prevent the unauthorized use of  
6 the property, or may assume ownership or management  
7 of the property to assure that it is used in the manner  
8 originally authorized.

9 (d) The board shall develop a process to monitor the  
10 uses of any land that a local government or nonprofit  
11 organization receives pursuant to this division in order to  
12 ensure those uses are in conformance with the purposes  
13 for which the property is accepted.

14 *SEC. 11. Section 37023 is added to the Public*  
15 *Resources Code, to read:*

16 *37023. The donee shall allow public access to the*  
17 *property to the extent that public access is consistent with*  
18 *the purposes for which the property is accepted. Before*  
19 *providing public access to the property, the donee shall*  
20 *develop a plan that minimizes the impact of public access*  
21 *on adjacent landowners in order to avoid infringement on*  
22 *the customary husbandry practices on adjacent or nearby*  
23 *agricultural or timber operations and that establishes a*  
24 *setback or buffer area, as necessary. This section does not*  
25 *require access to privately owned lands for which a*  
26 *conservation easement is contributed pursuant to this*  
27 *division unless the conservation easement provides for*  
28 *public access.*

29 *SEC. 12. Section 37024 is added to the Public*  
30 *Resources Code, to read:*

31 *37024. If the city, county, or city and county in which*  
32 *the property is located objects to acceptance of the*  
33 *property, the city, county, or city and county, as*  
34 *appropriate, may request the Director of Finance to*  
35 *disapprove the acceptance of the property. These*  
36 *objections may relate to the city's, county's, or city and*  
37 *county's conservation and development policies and*  
38 *their general plans, the efficient use and delivery of*  
39 *infrastructure, and the potential loss of property tax*  
40 *revenue. The Director of Finance may disapprove*

1 acceptance after reviewing the objections of the city,  
2 county, or city and county. The Director of Finance shall  
3 provide a written explanation for his or her decision to the  
4 affected city, county, or city and county.

5 SEC. 13. Section 37025 is added to the Public  
6 Resources Code, to read:

7 37025. Any donee accepting property pursuant to the  
8 program shall own and maintain any setback or buffer  
9 area that may be necessary for the use of that property in  
10 accordance with this division, in order to avoid  
11 infringement on the customary husbandry practices on  
12 adjacent or nearby agricultural or timber operations.

13 ~~and Taxation Code, to read:~~

14 ~~7065. The board may promulgate regulations~~  
15 ~~authorizing any city subject to Part 1.5 (commencing~~  
16 ~~with Section 7200), that also collects a business license tax~~  
17 ~~pursuant to Section 37101 of the Government Code, to~~  
18 ~~take any action as the board deems appropriate to assure~~  
19 ~~that every person who engages in or conducts business as~~  
20 ~~a seller within this state complies with the requirements~~  
21 ~~of Section 6066.~~

22 \_\_\_\_\_  
23 CORRECTIONS

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